

ERRATA SHEETS
DEPOSITION OF DAVID NEWMAN
JUNE 19, 1997

- p. 11 line 9: Add: If I were preparing the declaration today, I would include additional facts and circumstances known now to me.
- p. 12 line 21: Rather than describing my declaration as incorrect, it would be more accurate to say it was incomplete based on what I now know.
- p. 13 lines 1-22: The statements I made in paragraphs 55, 57, 58 and 48 of the declaration were not correct because I now know they were incomplete. Additional comments should have been included in those paragraphs.
- p. 14 line 9: "not" should be "partly."
lines 10, 11: The breakdown in communication also partly caused the missed date.
- p. 15 line 2: Add: What happened, I now know, was telephone contact between Axonn and me near the date but a breakdown of communications between us regarding how Axonn would proceed in response to the office action.
- p. 17 line 5: The conclusions of my declaration were not accurate because they did not also include a description of the breakdown of communications between Axonn and myself which occurred in February of 1993.
- p. 18 lines 10-14: Based on my review of telephone records and other information since my deposition, my statement at lines 10-14 is not accurate. It was my experience that Axonn pursued protection of its intellectual property rights as strongly as its financial resources permitted. I have no knowledge that Axonn decided to allow this application to go abandoned, and I received no such instruction from anyone at Axonn.
- p. 19 line 4: The sentence beginning with the word "It" and concluding at the end of line 6 is a paraphrasing of the memorandum by Erin Pierce.
lines 7-14: Since my deposition, I have reviewed a letter dated February 18 faxed to me by Michael Eckstein asking me to contact him. Had I seen that when my declaration was prepared in 1995, I would have


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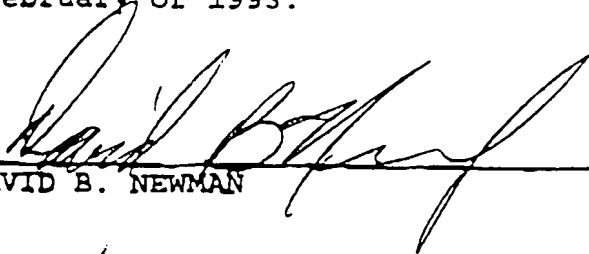
EXHIBIT

supplemented the declaration with a description of the breakdown of communications which occurred in February of 1993.

- p. 21 lines 6-10: Axonn did not instruct me not to proceed with this application in February of 1993; there was no communication of Axonn's decision or of any instructions to me regarding action to be taken prior to February 19, 1993. It was several months later, before I learned that James-Arthur's role in relation to some of the claims of this patent was in dispute between Arthur and Axonn.
- p. 21 line 16: I also explained to Axonn that under these circumstances, if the application went abandoned, the abandonment would not be intentional and the application could be revived with payment of a fee of \$585.
- p. 31 lines 8, 9: Should be: They never informed me of their decision.
- p. 34 lines 18, 19: My statement that Axonn did not want certain procedures followed was an incorrect assumption. Actually, in February '93 Axonn never communicated its decision among the options we had discussed.
- p. 34 line 22 through p. 35, lines 1, 2:
I prepared no draft responses in February of 1993 because Axonn's decision regarding what action was to be taken with respect to the response due then was not communicated to me.
- p. 37 line 17: Add: Although we were aware of the date, there was a breakdown of communication between me and Axonn about the company's decision.
- p. 38 lines 11-13: I do not know that Axonn allowed the February 19 deadline to pass; the company's decision was not communicated to me.
- p. 39 line 21: Add: Axonn never told me to let this patent go abandoned.
- p. 46 line 14: Add: It was also missed due to the breakdown in communications.
- line 21: Should be: they were aware of this date, but there was no communication of any decision on how to proceed.
- p. 47 line 1: Add: my docket problem was only part of the reason for the missed response deadline.

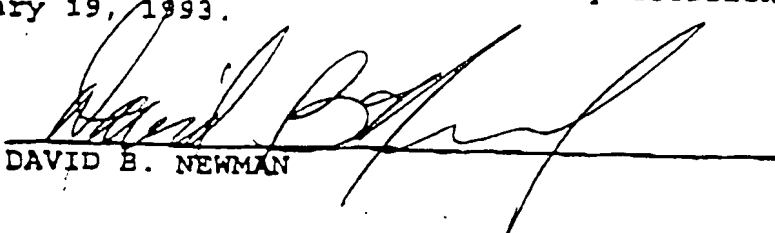

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- p. 50 line 20 "It" refers to filing a continuation.
- p. 55 line 16: Add: Arthur would not sign the document the Patent Office requested because of his dispute with Axonn.
- p. 57 line 5: Axonn did not tell me they were opposed to a filing showing Arthur as an inventor in February of 1993, however, that was the company's position for a time later in 1993.
- p. 58 lines 5-15: My statements here were based on assumptions I made as a result of the listing of Arthur's name first on this application. I now understand that Britton Sanderford gave me that listing instruction at Arthur's request and that Sanderford believes that his disclosures predate many of Arthur's.
- p. 59 line 4: Add: but there was a breakdown of communications among us.
- p. 60 lines 19-20: Should be: did not have Erin Pierce's memo in my file when I made the statement which I believed at the time,
- p. 61 Add: Had I conferred with Axonn and reviewed its documents when I prepared my 1995 declaration, I would have added that there was a breakdown of communication between Axonn and me in February of 1993.
- p. 63 lines 1, 2: Mr. Kuesters asked me why the application went abandoned and I told him what was going on in my life then.
- p. 69 lines 6-8: I do not know that Axonn made any decision about proceeding with this application in February of 1993; I know I was not instructed to allow the patent go to abandoned.
- p. 70 line 17: Add: I should have added that there was a breakdown of communication.
- p. 71 lines 12-13: Should read: never informed me that they had made any decision in February of 1993.
- p. 72 line 21: "incorrect" should be "incomplete."
- p. 127 line 20: Add: There was a breakdown in communications between Axonn and me so I do not know what Axonn decided, if anything, in February of 1993.

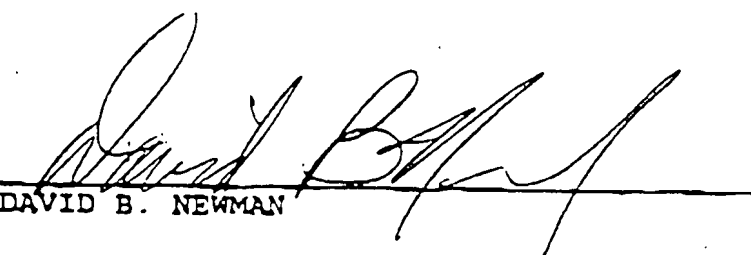


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- p. 141 lines 4-5: Should read: he wanted to talk about some fee splitting arrangement on the Cargill case.
- p. 149 lines 17-20: My response should have concluded with the word "No," the remainder of the statement was an assumption on my part, not a specific recollection.
- p. 155 lines 3-16: I recall having conversations with Axonn encouraging revival efforts during 1993, but I do not recall the dates when those conversations occurred. I do not presently believe, however, that I encouraged revival efforts at the March 1993 meeting at Axonn based on conversations I have had since my deposition with others who attended the March meeting about the discussions which took place at that time.
- lines 18-19: Should be: Oh, I told him in January that if nothing was done it could become abandoned.
- line 22: Should be: I was aware once I received the May Notice of Abandonment that nothing had been filed and that the application was considered abandoned.
- p. 156 lines 7-14: I received no instructions to commence revival efforts during mid-1993. I believe that was because Axonn's continuing litigation with James Arthur made it impossible for Axonn to obtain the declaration from Arthur which the Patent Office was requiring.
- lines 19-22; p. 158, line 1: I do not believe that I received any instructions from Axonn to delay my efforts as early as March of 1993. See preceding comment re: p. 155.
- p. 165 line 9: "their" should be "an"
- p. 171 lines 12-21: After my conversation with Michael Eckstein on February 10, 1993, I was never informed by anyone that Axonn made a decision on what to do about the response to the Office Action. No one ever told me to let the application go abandoned. On February 10, 1993, I understood that I was to wait for further instructions, but those instructions did not reach me.
- p. 173 line 11: I did not write a letter confirming the comments made by Michael Eckstein in our February 10 conversation because I understood that there would be additional communication between us when Axonn made its decision about how I should proceed on their behalf. I did not receive notice that Axonn had made any decision prior to February 19, 1993.


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- p. 178 lines 18-20: Replace text with: Axonn did instruct me to delay revival efforts at various times during the period between May 1993 and the end of that year while the dispute with James Arthur made it impossible for Axonn to obtain the signature the Patent Office would require for revival. Axonn did not explain why I was given those instructions.
- p. 183 lines 7-8: "not within the situation they were in" should be: "I was never informed Axonn made a decision."
- lines 10-12: I do not recall that Axonn was "taking the position that they didn't want to make a statement that Arthur was an inventor" in February of 1993. No one at Axonn communicated that to me at that time.
- p. 187 line 20 through p. 191, line 19: Since my deposition, I have discussed the events of early 1993 with others and further considered my testimony. I now believe that the discussion described on these pages of my deposition actually took place in May of 1993 rather than in March.
- p. 190 line 17: "meeting" should be "telephone call"
- p. 191 line 22 through p. 195, line 11: Since my deposition, I have discussed the events of early 1993 with others and further considered my testimony. I now believe that the second discussion described on these pages of my deposition actually took place in May of 1993 rather than in March.
- p. 196 line 4: "April" should be "May"
- p. 197 line 1-10: The discussion referenced at this point in the deposition actually took place in May 1993 after notice of abandonment was received.
- p. 200 lines 20-22: Should be: Mr. Eckstein did not authorize a revival in May of 1993.
- p. 203 lines 8-9: The June 1993 meeting at Axonn concerned the status of James Arthur as an inventor of various claims in the patents which had already issued to Axonn and which were involved in the Cargill litigation.
- p. 205 lines 15-22: My testimony at these lines was based on my assumptions from instructions I received from Britton Sanderford when the mother patent application was filed


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in 1988. However, I now understand that Mr. Sanderford believes that his disclosures actually predate many of Mr. Arthur's.

- p. 207 line 7: "imminently" should be deleted
- p. 208 line 9: Add: I now understand that Mr. Sanderford recalls telling me that the only reason Arthur was listed first as an inventor is because Arthur made a request to Sanderford that, because Arthur never previously had been listed first as an inventor, Arthur should be so listed on the 1988 filing.
- p. 211 line 12: Should be: He told me he would get back to me.
- p. 245 line 10: Add: Or it is in another case file.
- p. 255 lines 21-22 through p. 256, line 2: Should be: "the breakdown in communication previously discussed." See my corrections and comments related to other pages of the deposition discussing the events of mid-February 1993.
- p. 277 lines 5-6: "wouldn't allow" should be "did not authorize"
- p. 280 line 14: date references should be May, not March
- p. 283 line 13: Add: But ultimately there was a breakdown in communication about how to proceed.
- p. 301 lines 19-22: Should be: I did not prepare documents to proceed under either 1.83 or 1.47 because of the breakdown of communication between Axonn and myself in February of 1993.
- p. 302 line 3: "So they didn't want me to" should be "I never received instructions to do so, so"


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